Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1536

In The

Supreme Court of the United States

October Term, 1986

WADE POWELL and FREDA POWELL, his wife, and ERWIN WHITE and SUSAN WHITE, his wife,

Petitioners,

versus

STATE OF FLORIDA, MUNROE REGIONAL MEDICAL CENTER, WILLIAM H. SHUTZE, M.D., KEITH GAUGER, THOMAS M. TECHMAN, NORTH FLORIDA LIONS EYE BANK, INC., THE MEDICAL EYE BANK, INC., FLORIDA LIONS EYE BANK, INC., FLORIDA SOCIETY OF OPHTHALMOLOGY, INC., METROPOLITAN DADE COUNTY AND THE FLORIDA MEDICAL ASSOCIATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONSE BY FLORIDA SOCIETY OF OPHTHALMOLOGY, INC., TO MOTION FOR PARTICIPATION OF THE RABBINICAL ASSOCIATION OF GREATER MIAMI, et al., AND BRIEF FILED PURSUANT THERETO

Robert W. Perkins
R. Bruce McKibben, Jr.
Dempsey & Goldsmith, P.A.
307 West Park Avenue
P. O. Box 10651
Tallahassee, Florida 32602
(904) 222-3638
Counsel for Respondent,
FLORIDA SOCIETY OF OPHTHALMOLOGY, INC.

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or call collect (402) 342-2831

The FLORIDA SOCIETY OF OPHTHALMOLOGY, INC., by and through undersigned counsel, hereby responds to the motion by THE RABBINICAL ASSOCIATION OF GREATER MIAMI, TEMPLE BETH OR, AND RABBI RAMI SHAPIRO, Ph.D. (hereinafter "RABBINICAL ASSOCIATION") to participate as amicus curiae in this action, and would show as follows:

1. The FLORIDA SOCIETY OF OPHTHALMOLOGY, INC. ("FSO") is a respondent in this matter. On or about April 2, 1987, FSO's legal counsel was contacted by Benedict P. Kuehne, Esq. regarding filing an amicus curiae brief on behalf of the RABBINICAL ASSOCIATION in this proceeding. No discussion regarding the contents or argument in that brief was had between the undersigned and Mr. Kuehne.

2. As a matter of professional courtesy, FSO's counsel consented to the filing of amicus curiae brief by the RABBINICAL ASSOCIATION. FSO has no reason to deny any interested party the right to take part in the matters on appeal.

3. However, it is evident that the basis for the RABBINICAL ASSOCIATION'S arguments in its amicus curiae brief are not consistent with the issues on appeal. That is, RABBINICAL ASSOCIATION interjects a religious claim based on the free exercise clause of the First Amendment, an assertion not heretofore made part of the record in this case.

4. It is necessary for FSO to qualify its prior consent to RABBINICAL ASSOCIATION'S request to intervene as amicus curiae in order to make clear to this

Honorable Court what FSO intended in that consent. FSO readily consents to the filing of amicus curiae briefs by interested and affected parties, but only so long as such briefs contain claims already part of the record on appeal.

5. FSO has notified RABBINICAL ASSOCIATION of the filing of this response and the rationale for FSO's position.

WHEREFORE, FLORIDA SOCIETY OF OPHTHALMOLOGY, INC. requests this Honorable Court take notice of the nature of the consent given RABBINICAL ASSOCIATION by FSO regarding participation in this appeal, including the intended limitations of that consent as set forth herein.

Submitted this 27 day of April, 1987.

ROBERT W. PERKINS
R. BRUCE MCKIBBEN, JR.
DEMPSEY & GOLDSMITH, P.A.
307 West Park Avenue
P. O. Box 10651
Tallahassee, Florida 32602
(904) 222-3638

Counsel for Respondent,
FLORIDA SOCIETY OF
OPHTHALMOLOGY, INC.